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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/689,425

10/20/2003

Gordon Bremer

061606-1671

2794

24504

7590

07/22/2010

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EXAMINER

TSE, YOUNG TOI

ART UNIT

PAPER NUMBER

2611

MAIL DATE

DELIVERY MODE

07/22/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/689,425	<b>Applicant(s)</b> BREMER ET AL.	
	<b>Examiner</b> Young T. Tse	<b>Art Unit</b> 2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13, 14, 18, 20-22, 24, 25, 29-41, 45-54 and 56-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 9-11, 13, 29 and 49 is/are allowed.
- 6) ☒ Claim(s) 6-8, 14, 18, 20-22, 24, 25, 30-41, 45-48, 50-54 and 56-72 is/are rejected.
- 7) ☒ Claim(s) 20, 21, 50, 51 and 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20100609</u> .                                                | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 9, 2010 has been entered.

### ***Claim Objections***

2. Claims 20-21, 50-51 and 67 are objected to because of the following informalities:

Claim 20, line 2, "the first performance parameter" should be "the second performance parameter" because only the means or elements 48-52 shown in Figure 4 are capable of selecting the second performance parameter (transmit data rate) from a plurality of possible performance parameters.

Claim 21, line 6, "a signal-to-noise" should be "the signal-to-noise". See claim 14, line 6.

Claims 50 and 51 either directly or indirectly depend from the objected claim 21, therefore they are also objected.

Claim 67, lines 2-3, "the first performance parameter" should be "the second performance parameter" because only the requesting step or elements 48-52 shown in Figure 4 are capable of selecting the second performance parameter (transmit data rate) of the received signal is marginally supported.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-8, 14, 18, 20-22, 24-25, 30-41, 45-48, 50-54 and 56-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 depends from claim 2 and recites that the negotiating step is performed after the receiving step and before the determining step is vague and indefinite because the precedent independent claim 2 started with the negotiating step, and then the receiving step. Also see claims 58 and 65 for the same reason described in claim 6 above.

Claim 14 (line 6), claim 22 (line 8), claim 31 (line 9), claim 37 (line 10), and claim 63 (line 7) recite the means or step for determining a signal-to-noise-ratio for a received signal, however, none of the rest of the means or steps in each of the claims correspond to the determined signal-to-noise-ratio.

Claims 7 and 8 both depend from the rejected claim 7, therefore they are also rejected.

Claims 18, 20, 21, 30 and 50-53 either directly or indirectly depend from the rejected independent claim 14, therefore they are also rejected.

Claims 24, 25, 28, 54 and 56 either directly or indirectly depend from the rejected independent claim 22, therefore they are also rejected.

Claims 32-36, 57 and 59-62 either directly or indirectly depend from the rejected independent claim 31, therefore they are also rejected.

Claims 38-41 and 45-48 either directly or indirectly depend from the rejected independent claim 37, therefore they are also rejected.

Claims 64 and 66-72 either directly or indirectly depend from the rejected independent claim 63, therefore they are also rejected.

***Allowable Subject Matter***

5. Claims 2-5, 9-11, 13, 29 and 49 are allowed.

6. Claims 6-8, 14, 18, 20-22, 24-25, 30-41, 45-48, 50-54 and 56-72 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claims 20-21, 50-51 and 67 would be allowable if rewritten or amended to overcome the objection(s) set forth in this Office action.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McHale et al. relates to a remote XDSL transceiver or modem and a control block operates to control power up and training of the XDSL transceiver such that an XDSL physical player can be dynamically brought up and down.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Young T. Tse whose telephone number is 571- 272-3051. The examiner can normally be reached on Monday-Friday 10:00-6:30 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad H. Ghayour can be reached on 571- 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Young T. Tse/  
Primary Examiner, Art Unit 2611